

APPLICATION FOR

**DISTRICT COURT JUDGESHIP  
Thirteenth Judicial District**

**A. PERSONAL INFORMATION**

1. Full Name: Jacquelyn Marjorie Hughes
  - a. What name do you commonly go by? Jacqui
2. Birthdate: [REDACTED] Are you a U.S. citizen? Yes
3. Home Address: [REDACTED] Phone: [REDACTED]
4. Office Address: 2722 3<sup>rd</sup> Ave. N. Ste. 400  
Billings, MT 59101 Phone: (406) 855-4979
5. Length of residence in Montana: 37 years
6. Place of residence for the last five years:

<u>Dates</u>	<u>City</u>	<u>State</u>
7/10/2006 – Present	Billings	Montana

## B. EDUCATIONAL BACKGROUND

7. List the names and location of schools attended beginning with high school:

<u>Name</u>	<u>Location</u>	<u>Date of Degree</u>	<u>Degree</u>
Laurel High School	Laurel, MT	1997	H.S. Diploma
Montana State University	Billings, MT	None	None
Montana State University	Bozeman, MT	2001	B.S in Political Science
University of Montana School of Law	Missoula, MT	2005	Juris Doctor

8. List any scholarships, awards, honors and citations that you have received:

I received a tuition waiver my first year of undergraduate school through a high school honors scholarship. From Fall Semester 1997 through Spring Semester 2000, I qualified for the GI Bill, which paid a significant amount towards my education.

My second year in law school, I was selected as a Junior Partner, which is essentially a teaching assistant position in legal research and writing. That position came with a scholarship for both fall and spring semester. I graduated with honors from the University of Montana School of Law.

9. Were you a member of the Law Review? If so, provide the title and citation of any article that was published and the subject area of the article.

I was not a member of the Law Review.

### C. PROFESSIONAL BACKGROUND AND EXPERIENCE

10. List all courts (including state and federal bar admissions) and administrative bodies having special admission requirements in which you are presently admitted to practice, giving the dates of admission in each case.

<u>Court or Administrative Body</u>	<u>Date of Admission</u>
State of Montana District Courts	10/17/2005
United States District Courts, District of Montana	10/17/2005
Ninth Circuit Court of Appeals	10/13/2009
State of North Dakota, District Courts	12/23/2011
United States District Court, District of North Dakota	12/12/2016

11. Indicate your present employment. (List professional partners or associates, if any).

Hughes Law, P.L.L.C. I am a solo practitioner. I have one part-time legal assistant.

12. State the name, dates and addresses of law firms with which you have been associated in practice, governmental agencies or private business organizations in which you have been employed, periods you have practiced as a sole practitioner, and other prior practice:

<u>Employer's Name</u>	<u>Position</u>	<u>Dates</u>
Billings Municipal Court	Judge Pro Tem	5/30/2011 - Present
Office of the State Public Defender	Contract/Conflict Attorney	4/1/2013 - Present
Hughes Law, P.L.L.C.	Solo Practitioner	6/1/2010 - Present
Hedger Friend, P.L.L.C.	Associate	8/27/2007 – 5/31/2010
Matovich and Keller, P.C.	Associate	9/1/2005 – 7/31/2007
United States Attorney's Office, District of Montana	Clinical Intern	8/22/2004 – 4/20/2005
Phillips & Bohyer, P.C.	Intern	6/1/2003 – 7/15/2005

13. If you have not been employed continuously since completion of your formal education, describe what you were doing.

I have been employed continuously since law school.

14. Describe the nature of your present law practice, listing the major types of law that you practice and the percentage each constitutes of your total practice.

In the last few years, my case load has been approximately fifty percent contract and conflict cases from the Office of Public Defenders and Appellate Defenders' Office. The remainder of my practice consists of a variety of civil litigation matters including personal injury, insurance disputes, breach of contract and real property disputes. A minimal amount of my practice, less than five percent, is pro bono or reduced fee family law including adoption, marital dissolution and child custody disputes. Occasionally, I draft simple wills.

15. List other areas of law in which you have practiced, including teaching, lobbying, etc.

I have been a Judge Pro Tem in Billings Municipal Court since May 30, 2011. I practiced in the area of Federal Employer Liability Act Defense during my employment at Hedger Friend from 2007 through 2010. I practiced insurance defense at Matovich and Keller as well as when I interned at Phillips and Bohyer. As a third year law student, I prosecuted misdemeanor cases for the U.S. Attorney's Office under the Student Practice Rule and assisted with research and writing in numerous federal criminal cases.

16. If you specialize in any field of law, what is your specialty?

Given the wide variety of cases I have worked on in recent years, I don't think I could claim to specialize or focus in a single field of law.

17. Do you regularly appear in court? Yes

What percentage of your appearance in the last five years was in:

Federal court	<u>2</u> %
State or local courts of record	<u>97</u> %
Administrative bodies	<u>1</u> %
Other	<u>0</u> %

18. During the last five years, what percentage of your practice has been trial practice? 90 %

19. How frequently have you appeared in court? Eight times per month on average.
20. How frequently have you appeared at administrative hearings? Two times per year on average.
21. What percentage of your practice involving litigation has been:

Civil	<u>50</u>	%
Criminal	<u>50</u>	%
Other	<u>0</u>	%

22. Have you appeared before the Montana Supreme Court within the last five years? If so, state the number and types of matters handled. Include the case caption, case citation (if any), and names, addresses and phone numbers of all opposing counsel for the five most recent cases.

I have not orally argued any cases before the Montana Supreme Court. In the last five years, I've presented one civil case and four criminal cases to the Montana Supreme Court.

*Bergum et. al. vs. Musselshell County*, 2016 MT 47. Musselshell County was represented by Alan Payne and Marc Buyske of Doney Crowley P.C.; 44 6<sup>th</sup> Ave.; Helena, MT 59601; (406)443-2211.

*State v. Butterfly*; 2016 MT 195. The State of Montana was represented by Timothy C. Fox and Mardell Ployhar, Montana Attorney General's Office; 215 North Sanders; Helena, MT 59620-1401; (406) 444-2026.

*State v. Taylor*; 2014 MT 142. The State of Montana was represented by Timothy C. Fox and Tammy Plubel, Montana Attorney General's Office; 215 North Sanders; Helena, MT 59620-1401; (406) 444-2026.

*State v. Chafee*, 2014 MT 226. The State of Montana was represented by Timothy C. Fox and Johnathan Krauss, Montana Attorney General's Office; 215 North Sanders; Helena, MT 59620-1401; (406) 444-2026.

*State v. Parrish*; Case No. DA 15-0471; The State of Montana was represented by Timothy C. Fox Montana Attorney General; 215 North Sanders; Helena, MT 59620-1401; (406) 444-2026.

23. State the number of jury trials that you have tried to conclusion in the last ten years.

I have been trial counsel in seven jury trials in the last ten years. As a Judge Pro Tem I have presided over two jury trials in the last five years.

24. State the number of non-jury trials that you have tried in the last ten years.

I have been trial counsel in fifteen bench trials in the last ten years. As a Judge Pro Tem I have presided over approximately ten bench trials.

25. State the names, addresses and telephone numbers of adversary counsel against whom you have litigated your primary cases over the last two years. Include the caption, dates of trial, and the name and telephone number of the presiding judge. If your practice does not involve litigation, provide the same information regarding opposing counsel and the nature of the matter.

*McPhillips vs. Somont Oil Company Inc.*, DV-16-004 (9<sup>th</sup> Jud. Dist. Ct., Toole County). This case settled before trial but was litigated before Hon. Robert Olsen; Montana Seventh Judicial District Court; P.O. Box 822; Shelby, MT 59474. Opposing Counsel was Brian Lee, Lee Law Office, P.C., 158 Main Street, Shelby, MT 59474; (406) 434-5244.

*Gaskins vs. BNSF Railway Company*, ADV-16-0856 (8<sup>th</sup> Jud. Dist. Ct.). This case is pending before Hon. John W. Parker, Montana Eighth Judicial District Court; 415 2<sup>nd</sup> Ave. N. Rm. 203; Great Falls, MT 59401; (406) 771-6566. Opposing Counsel is Tom Bell, Hedger Friend, P.L.L.C.; 2800 Central Ave.; Billings, MT 59102; (406) 896-4100.

*Rocky Mountain Ground, Inc. vs. Midgley*, DV 14-1368 (13<sup>th</sup> Jud. Dist. Ct.). This case has not yet gone to trial but has been litigated before Hon. Mary Jane Knisely, Montana Thirteenth Judicial District Court Judge; 27 North 27<sup>th</sup> Street, Rm. 527; Billings, MT 59107; (406) 867-2500. Opposing Counsel is Tom Singer, Axilon Law Group, P.L.L.C.; 115 North Broadway, Ste. 310; Billings Montana 59103; (406) 294-9466.

*Pierce v. Griffin*, DV 16-0630 (13<sup>th</sup> Jud. Dist. Ct.). This case is pending before Hon. Michael G. Moses; Montana Thirteenth Judicial District Court; 217 N. 27<sup>th</sup> St., Rm. 601; Billings, MT 59107; (406) 256-2911. Opposing Counsel is Bard Middleton, Middleton Law Firm; P.O. Box 1084; Billings, MT 59103; (406) 252-9266.

*Bergum v. Musselshell County*, DV 07-28 (14<sup>th</sup> Jud. Dist., Musselshell County). This case was resolved on summary judgment before Hon. Randal Spaulding, Montana Fourteenth Judicial District Court, Musselshell County; 506 Main Street, Roundup, MT 59072; (406) 323-1701. Musselshell County was represented by Alan Payne and Marc Buyske, Doney Crowley, P.C.; 44 West Sixth Ave. Ste. 200; Helena, MT 59624; (406) 443-2211. Musselshell County was also represented by Kent Sipe, Musselshell County Attorney, 506 Main Street, Roundup, MT, 59072; (406) 323-2230.

Wyatt Glade; Custer County Attorney; 1010 Main Street # 5; Miles City, MT 59301; (406) 874-3310. I have handled numerous criminal cases and abuse and neglect cases against Mr. Glade in the last two years before Hon. Michael Hayworth, Montana Sixteenth Judicial District Court, Custer County; 1010 Main Street, Miles City, MT 59301; (406) 874-3335. I have also handled cases against Mr. Glade before Hon. Nickolas Murnion, Sixteenth Judicial District Court, Custer County; 1200 Main Street, Forsyth, MT 59327; (406) 346-6109.

C. Kristine White; Rosebud County Attorney; 1200 Main Street, Forsyth, MT 59327; (406) 346-2236. I have handled numerous criminal and abuse and neglect cases against Ms. White in the last two years before Hon. Nickolas Murnion, Montana Sixteenth Judicial District Court, Rosebud County; 1200 Main Street, Forsyth, MT 59327; (406) 346-6109. I have handled several misdemeanor cases against Ms. White before Judge Lee Busch, Rosebud County Justice of the Peace; P.O. Box 504; Forsyth, MT 59327; (406) 346-2638.

Kevin Peterson, Musselshell County Attorney; 506 Main Street; Roundup, MT 59072; (406) 323-2230. I have handled multiple criminal cases and abuse and neglect cases before Hon. Randal Spaulding; Montana Fourteenth Judicial District Court, Musselshell County; 506 Main Street; Roundup, MT 59072; (406) 323-1701.

Kent Sipe, Musselshell County Attorney; 506 Main Street, Roundup, MT; (406) 323-2230. I have handled multiple criminal cases and against Mr. Sipe before Hon. Randal Spaulding; Montana Fourteenth Judicial District Court, Musselshell County; 506 Main Street; Roundup, MT 59072; (406) 323-1701.

Jay Harris, Big Horn County Attorney; 121 3<sup>rd</sup> St. West, Hardin; MT 59034; (406) 665-9720. I have handled multiple criminal cases and abuse and neglect cases against Mr. Harris before Hon. Blair Jones, Twenty-Second Judicial District Court, Big Horn County; P.O. Box 1268, Columbus, MT 59019; (406) 322-5406. I've also handled numerous misdemeanor criminal cases against Mr. Harris before Judge Leroy Not Afraid, Big Horn County Justice of the Peace; P.O. Box 908; Hardin, MT 59034; (406) 665-9760.

Jeff Noble, Miles City Attorney; P.O. Box 910; Miles City, MT 59301; (406) 874-8619. I've handled numerous misdemeanor criminal cases against Mr. Noble before Judge Al Homme, City Court Judge; 17 S. 8<sup>th</sup> Street; Miles City, MT 59301; (406) 234-5939.

Michael Elmore, Deputy Custer County Attorney; 1010 Main Street # 5; Miles City, MT; (406) 874-3310. I have handled numerous criminal cases and abuse and neglect cases against Mr. Elmore in the last two years before Hon. Michael Hayworth, Montana Sixteenth Judicial District Court, Custer County; 1010 Main Street; Miles City, MT; (406) 874-3335. I've also handled misdemeanor criminal cases against Mr. Elmore before Judge Donald Neese, Custer County Justice of the Peace; 1010 Main Street, Miles City, MT; (406) 874-3408.

Robert Spoja, Deputy Yellowstone County Attorney; 217 N. 27<sup>th</sup> Street, Rm. 701; Billings, MT 59101; (406) 256-2870. I've handled two criminal cases that resolved before trial against Mr. Spoja before Hon. Mary Jane Knisely, Montana Thirteenth Judicial District Court Judge; 27 North 27<sup>th</sup> Street, Rm. 527; Billings, MT 59107; (406) 867-2500.

Nick Owens, Deputy Yellowstone County Attorney; 217 N. 27<sup>th</sup> Street, Rm. 701, Billings, MT 59101; (406) 256-2870. I had one criminal case against Mr. Owens that resolved prior to trial before Hon. Rod Souza, 27 N. 27<sup>th</sup> Street, Rm. 605, Billings, MT 59107; (406) 256-2922.

26. Summarize your experience in adversary proceedings before administrative boards or commissions during the last five years.

I have appeared before the Office of Disability Adjudication and Review, representing persons whose applications for Social Security Disability had been denied six times in the last four years. I represented parties before the Human Rights Bureau twice, once on behalf of the Charging Party and once on behalf of the Respondent.

27. If you have published any legal books or articles, other than Law Review articles, list them, giving citations, dates, and topics involved. If you lectured on legal issues at continuing legal education seminars or otherwise, state the topic, date, and group to which you spoke.

I spoke at the Montana Trial Lawyers Association Spring Seminar on April 12, 2013. The topic was Mont. R. Civ. P. 35 Medical Examinations. On March 20, 2015, I spoke at a National Business Institute CLE on Advanced Trial Tactics. My topics were Opening Statements, Direct Examinations, and Technology in the Courtroom. On July 28, 2016, I spoke at a National Business Institute CLE on Proving Damages in Personal Injury Suits. My topics at the CLE were Documenting the Extent of the Injury, Sources of Recovery and Liens, and Legal Ethics.



## D. PROFESSIONAL AND PUBLIC SERVICE

28. List all bar associations and legal professional societies of which you are a member. Provide the titles and dates of any office that you have held in such groups and committees to which you belong. These activities are limited to matters related to the legal profession. List the dates of your involvement.

State Bar of Montana, Member, 2005 – Present.

State Bar of North Dakota, Member, 2011 – Present.

Yellowstone Area Bar Association, Member, 2005 – Present.

Montana Trial Lawyers Association, Member, 2009 – Present.

29. List organizations and clubs, other than bar associations and professional societies, of which you have been a member during the last five years. State the title and date of any office that you have held in each organization. If you held any offices, describe briefly your activities in the organization.

COR Enterprises Board of Directors, March 2013 to Present.

Cottonwood Townhome Association Secretary/Treasurer, 2016 to Present

Biz to Biz Network – Billings 8, Member, January 2017 to Present.

CASA of Yellowstone County – Child Advocate, May, 2011 to August, 2013.

30. Have you ever run for or held public office? If so, provide the details.

No.

31. Explain your philosophy of public involvement and practice of giving your time to community service.

I was raised hearing Aesop's fable, *The Trees and the Bramble*. While not everyone is meant to give back in the context of a public office, we need to be cognizant of the talents we are given, and be willing to sacrifice some of our time for the good of others and the good of the community.

From 2011 to 2013, I served as a Yellowstone CASA advocate, which allowed me to utilize my unique combination of experiences in both the foster care and legal system to help displaced children find safe, permanent homes. After my son was born, I ceased volunteering in that capacity, but continued to work with children and families in Abuse and Neglect cases through the Office of Public Defenders. I am currently a board member at COR Enterprises.

After having worked in group homes for persons with developmental disabilities during undergraduate school and my first year of law school, I find serving on the COR Enterprises board gives me an opportunity to remain involved in something I feel strongly about. I am also the secretary/treasurer for our homeowner's association.

Finally, I give to the community by taking cases pro bono that would not be economically viable if my clients had to pay attorney fees. Sometimes it is clear that the potential client has been wronged and that there is a viable legal remedy, but the remedy would be cost-prohibitive if the client had to pay attorney fees. As an attorney, I have the skill set necessary to help some clients that would not otherwise be able to procure legal assistance, and take the opportunity to do so when I am able.

## **E. PROFESSIONAL CONDUCT AND ETHICS**

32. Have you ever been publicly disciplined for a breach of ethics or unprofessional conduct (including Rule 11 violations) by any court, administrative agency, bar association, or other professional group? If so, provide the details.

No.

33. Have you ever been found guilty of contempt of court or sanctioned by any court for any reason? If so, provide the details.

No.

34. Have you ever been arrested or convicted of a violation of any federal law, state law, or county or municipal law, regulation or ordinance? If so, provide the details. Do not include traffic violations unless they also included a jail sentence.

No.

35. Have you ever been found guilty or liable in any civil or criminal proceedings with conduct alleged to have involved moral turpitude, dishonesty and/or unethical conduct? If so, provide the details.

No.

36. Is there any circumstance or event in your personal or professional life that would, if brought to the attention of the Commission, Governor or Montana Supreme Court, affect adversely your qualifications to serve on the court for which you have applied? If so, provide the details.

No.

## **F. BUSINESS AND FINANCIAL INFORMATION**

37. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, provide the details, including dates.

No.

38. If you are an officer, director, or otherwise engaged in the management of any business, provide the name of the business, its nature, and the nature of your duties. If appointed as a district court judge, state whether you intend to resign such position immediately upon your appointment.

N/A.

39. State whether during the last five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise or organization. If so, identify the source and the approximate percentage of your total income it constituted over the last five years.

No. N/A.

40. Do you have any personal relationships, financial interests, investments or retainers that might conflict with the performance of your judicial duties or that in any manner or for any reason might embarrass you? If so, please explain.

No.

41. If appointed by the Governor, are you prepared to disclose the information required under 2-2-106, MCA (i.e., the name, address and type of your business; any present or past employer from which you currently receive benefits; any business or professional entity or trust in which you hold an interest; any entity in which you are an officer or director; and any real property, other than a personal residence, in which you hold an interest)?

Yes.

42. Have you filed appropriate tax returns as required by federal, state, local and other government authorities?  Yes  No

If not, please explain.

N/A.

43. Do you have any liens or claims outstanding against you by the Internal Revenue Service (IRS)?  
 Yes  No

If yes, please explain.

N/A.

44. Have you ever been found by the IRS to have willfully failed to disclose properly your income during the last five years? If so, provide the details.

No.

## G. WRITING SKILLS

45. In the last five years, explain the extent to which you have researched legal issues and drafted briefs. State if associates or others have generally performed your research and the writing of briefs.

My entire practice is based on research and writing. Research is important not only when it comes to briefing that is submitted to the court, but also in developing overall case strategy and being competent in the law so that I can accurately evaluate the merits of my case. In the last five years, I drafted an appellate brief in one civil case and four criminal cases. All four criminal cases involved different alleged crimes and different appellate issues. In the last five years, in the area of criminal law, I have researched and briefed matters ranging from the State's duty to disclose a confidential informant, limitations on a probation search, the scope of a search pursuant to arrest, right to speedy trial, and numerous minor procedural issues.

In the civil arena, I have briefed the distinction between prescriptive and express easements and the difference in how each is interpreted, when the public duty doctrine applies, the elements of a secured transaction, the application of the Montana Consumer Protection and Unfair Trade Practices Act to the hotel industry, and the difference between the definition of "disabled" in the American with Disabilities Act and "disabled" as it pertains to Social Security Disability. By far, the most complex issue I have researched in the past five years was the constitutionality of North Dakota's declaration of ownership of the minerals beneath Lake Sacajawea, minerals that had been privately owned prior to the Garrison Dam project.

I don't have anyone else conducting my legal research. This is, in part, because I am a solo practitioner. It is also because the importance of legal research is not limited to the resulting memo or brief. The process of legal research is how I absorb information that I can use for case strategy, briefing, settlement strategy, trial and future cases.

46. If you have engaged in any other types of legal writing in the last five years, such as drafting documents, etc., explain the type and extent of writing that you have done.

In my capacity as a Judge Pro Tem, I have had the opportunity to draft decisions on various motions to suppress, a motion to compel production of evidence, a motion to withdraw guilty plea, and a motion for euthanization of a dangerous animal.

I've prepared several Final Pretrial Orders, Proposed Jury Instructions, Trial Briefs, and Point Briefs. The purpose of the point briefs is to anticipate what issues may be presented at trial and have applicable legal authority quickly accessible. While the cases may never go to trial, or the issues may never come up, it is this research and writing that allows me to quickly and competently address issues in my case in the fast paced context of the courtroom.

Outside of pleadings and motions filed with the court, I have drafted letters to opposing counsel outlining my position and trying to resolve issues before briefing is necessary. I have also used legal writing in the context of pre-litigation communication, which often results in cases being resolved without litigation.

47. Attach a writing sample of no more than ten pages that you have written yourself. A portion of a brief or memorandum is acceptable.

Attached.

48. What percentage of your practice for the last five years has involved research and legal writing?  
70 %

49. Are you competent in the use of Westlaw and/or Lexis?

Yes. I have used both throughout my career.

## H. MISCELLANEOUS

50. Briefly describe your hobbies and other interests and activities.

Outside of work, I enjoy spending time with my husband and four-year old son. We attend Mustangs games, live music events and find a swimming pool or waterslide as often as possible.

Aside from spending time with my friends and family, my biggest stress relievers are cooking, reading and working on creative projects like re-purposing furniture or making furniture out of tree stumps.

51. Describe the jobs that you have held during your lifetime.

Target; 6/1993 to 10/1994; This was my first high school job. I worked in the food court.

McFates Montana Christmas Evergreen; 10/1994 to 12/1994 and 10/1995 to 12/1995; I worked for a small Christmas tree store clipping tree branches to make wreaths. After Thanksgiving, I worked in customer service selling Christmas Trees.

Camp on the Boulder; 6/1995 to 8/1995 and 6/1996 to 8/1996; During summer months in high school, I worked at a recreational camp forty-two miles south of Big Timber. I worked in the kitchen and assisted with camp ground maintenance.

Jade Palace; 6/1996 to 6/1997, 5/1998 to 8/1998 and 6/1999 to 8/1999; I started working as a hostess my senior year in high school. After I graduated, I worked there during college breaks as a hostess and bartender.

Montana Army National Guard; 5/1997 to 6/1997; I joined the National Guard shortly before graduating high school. I went on active duty for Basic Training in Fort Leonard Wood, Missouri from June, 1997 to August, 1997. I went on active duty again for additional training in Fort Jackson, South Carolina from February, 2000 to April, 2000.

Hastings; 9/1997 to 5/1998; I was a cashier and customer service representative.

Baker Street; 6/1997 to 1/2000; I was a customer service representative.

Reach Incorporated; 7/2000 to 5/2001 and 9/2001 to 5/2002; I was a group home attendant for persons with developmental disabilities.

R.E.M. Montana; 5/2001 to 8/2001 and 5/2002 to 8/2002; I worked in a group home for emotionally disturbed boys ages five to thirteen. The job consisted of making the group home as much like a

family setting as possible, working with counselors and psychiatrists to address behavioral issues and ensuring our kids were involved and active in summer programs.

Bozeman School Districts; 1/2002 to 5/2002; K-12 Substitute Teacher;

A.W.A.R.E., Inc.; 1/2002 to 5/2002; I worked in a group home for adults suffering from mental illnesses.

Opportunity Resources; 9/2002 to 5/2003; I was a group home attendant for persons with developmental disabilities.

Matovich & Keller, P.C., 9/2005 to 7/2007; I was an associate attorney for private insurance defense law firm.

Hedger Friend, P.L.L.C.; 8/2007 to 5/2010; I was an associate in litigation firm focused solely on railroad defense work for BNSF Railway, Inc.

Hughes Law, P.L.L.C.; 6/2010 to Present; I am a solo practitioner. I handle a wide variety of civil litigation and criminal defense.

52. Identify the nature and extent of any pro bono work that you have personally performed during the last five years.

I have worked with numerous friends and family members to draft simple wills. I've represented an incapacitated person through guardianship proceedings. I've represented friends in misdemeanor traffic cases through trial where restitution was a possibility if found guilty, but the client did not qualify for public defender services. I've done pro bono marital dissolutions and represented parents in child custody proceedings. I've represented multiple clients in minor real estate contract disputes and assisted them in reaching resolution without resorting to litigation.

53. In the space provided, explain how and why any event or person has influenced the way that you view our system of justice.

In various high school and college classes, I learned generalities about the justice system. Courts give members of society a place to resolve disputes without resorting to violence. Society relies on the justice system to enforce criminal laws and protect the community. At a young age, I believed protecting the community meant "do the crime, do the time" and I didn't understand the justice system's lenience with people who, to me, seemed unwilling to obey the law. Between my junior and senior year of college, I worked in a group home for emotionally disturbed children. That experience confronted my narrow view of the criminal justice system and provided me with a living example of how the justice system should work.



I knew nothing about the kids I would be working with and I was in no way prepared for the challenges I would encounter. My stomach churned as I read about the atrocities they'd suffered at the hands of people who loved them. The kids in this group home were so violent that they had failed out of every other possible placement due to the safety risk they posed to others. My first week on the job, a ten year old threatened to slit my throat if I didn't quit by the end of the day.

Although I was not at all comfortable with this job, I definitely wasn't about to let a ten year old chase me away. Fortunately, at that time I was working with another staff member with nearly two decades of experience in this type of group home who took me under her wing. She taught me that punishment was not an effective tool for these kids because no one could ever punish them worse than the punishment they had already experienced. Before we could make progress with their behavior, they needed to believe they could trust us and that we would be fair. They needed consistency and predictability. They needed to know that their caretaker's application of house rules was not going to change because the caretaker was angry, frustrated, having a bad day, struggling with a personality conflict or just giving up.

My mentor also taught me the importance of giving all of our kids a way to express their frustrations. If our kids didn't have a way to express themselves and their frustrations, the inevitable consequence was an entire house blow up. A blow up didn't just mean a normal terrible-twos temper tantrum. It meant shattered plates, shredded curtains, broken walls and staff intervention to prevent self-harm or harm to others. I was gently (and regularly) reminded how important it was for these kids to be acknowledged and heard if we were to have any chance at maintaining a peaceful home. Although I wasn't entirely convinced her methods could work, I didn't really see an alternative.

Applying her methods, I had the amazing opportunity to see significant positive changes. Violent behaviors decreased. Normal kid behaviors increased. Most of our kids made significant progress in their private therapy sessions. Two of our kids were reunited with their families. Three integrated into family settings and two of them were ultimately adopted. My skepticism of my mentors' methods had been misplaced.

What I learned by studying for a multiple choice social studies test was negligible compared to what I learned from these kids. It was interesting to read about general principles of the justice system in class but it was entirely different to apply those principles and witness the dramatic improvements that resulted. I began to understand why "do the crime, do the time" could not be a one-size-fits all solution. Rehabilitation is often more important than punishment, rehabilitation can work and people need to be given a chance. Our group home highlighted how the ability to air grievances is what keeps people from resorting to violence so long as they can trust the system. To trust the system, people need to know that application of law is not going to change because judges are angry, frustrated, having a bad day, struggling with a personality conflict or just giving up. A successful group home, like a successful justice system, didn't come from ruling with an iron fist; it came from focusing on rehabilitation and the letting our kids know they had a time and place where they could be heard.

54. In the space provided, explain the qualities that you believe to be most important in a good district court judge.

**Equanimity.** A district court judge will see the worst in people, the best in people, flat arguments that are legally correct and passionate arguments that are legally unfounded. There will be decisions that change the course of someone's life forever and decisions that seem trivial. A district court judge will inevitably be forced to render decisions against friends. Some decisions will be popular; some will not. Judges are human, and, therefore, subject to human circumstances; not every day will be a good day. Judicial presence must come from somewhere stronger and deeper than surrounding circumstances.

**Courage.** Doing the right thing does not always feel good and is not always well-received. This can be especially daunting, considering that district court judges are elected officials. A judge may disagree with a particular law, but he must have the courage to apply it regardless of personal preferences or concern for how the voting public will respond.

**Legal instinct.** There is a significant difference between knowing the law and applying the law. While most attorneys practice in a particular area, a judge must be able to learn and apply the law in every area; she does not have the luxury of rejecting a case because it is outside of her practice area. Additionally, the law changes as new statutes go into effect, old statutes are repealed and new Supreme Court cases are decided. Simply knowing the law is not enough. A judge needs to be able to instinctively apply law, both new and old, to ever changing fact patterns.

**Curiosity.** Judges are inundated with new information. New people. New facts. New laws. New arguments. The desire to constantly learn makes a judge better equipped to handle the constant inundation of new information, acquire a significant knowledge over time, observe details, distinctions and ambiguities, and issue sound legal decisions.

**Confidence.** A courtroom is not a place where a judge can second-guess his decisions or waiver in his position. A judge must be confident in his own abilities if he is to inspire the confidence of others in the judicial system as a whole.

**Humility.** Judges are civil servants. Our courtrooms should be a place where citizens can be seen and heard. A proper perspective on her role in the justice system is crucial to her ability to respect the people before her and give adequate consideration to the decisions she renders.

**Predictability.** Those appearing before the court need to know what to expect.

**Experience.** Both experience in the legal profession and a variety of life experiences are needed to become a good judge. Life experiences change how we see the world and how we view other people. It is what transforms book knowledge into a true understanding of how that knowledge affects the people around us. Experience helps us confront our own biases and breaks down the "us versus them" view of the world. Legal experience is necessary because it is the practice of law that fine-tunes legal analysis. Legal knowledge can be acquired, but a judge should have a credible history of legal application before taking the bench.

55. In the space provided, explain how a court should reach the appropriate balance between establishment of a body of precedent and necessary flexibility in the law.

The court is constantly balancing the need for predictability and stability with the reality that no two cases are identical, and each case needs to be evaluated on its own facts. Understanding the existing law is a starting point for evaluating cases. Established precedent tells us what the law is and how courts have treated similar cases in the past. A court needs to maintain the stability and predictability of the justice system by applying the law as it is written. Inconsistent application of the law undermines the stability of the justice system, and, in turn, the stability of our society.

At the same time, the courts must consider whether precedent applies to a specific case. A judge must know not only what the law is, but also why it is so. Understanding the social and political context in which precedential decisions were made gives the court the ability to know when and how to apply the existing body of precedent. This context is also crucial when cases come before the court for which there is no binding precedent. The court must have the ability to evaluate persuasive precedent from other jurisdictions and determine whether decisions from other jurisdictions should be applied in this jurisdiction. Such an evaluation requires a judge to know not only current case law, but also understand current trends in Supreme Court decisions. Based on those trends, a district court judge must try to predict how higher courts would decide the current case and render a decision accordingly.

A court must also have the ability to evaluate completely novel cases for which there is no existing precedent, binding or persuasive. That a legal theory is novel and unprecedented does not make it wrong. The court must consider existing decisions in other areas of law, and attempt to determine how the factors driving those decisions would apply to this decision.

As society changes, the law adapts. A court cannot make inconsistent or whimsical decisions under the guise of flexibility; nor can it rigidly impose precedent that is inapplicable or clearly distinguishable. Navigating this murky gray area requires not only the ability to learn the law, but a passion for understanding how law is made and enforced, and an instinctive ability to apply the law, both new and old, to ever changing circumstances.

56. In the space provided, state the reasons why you are seeking office as a district court judge.

I want to be a judge because I believe I have the characteristics necessary to contribute in a positive way to a justice system I believe in. In my experience representing numerous classes of people facing a variety of legal struggles, both criminal and civil, I still believe that our judicial system works. I have represented people who were homeless when they came to me for help with both civil and criminal matters. I have experience in representing large companies, as well as individuals who have been wronged by corporate conduct. I've worked as a contract public defender in several districts across the state, and drafted appeal briefs for the Appellate Defender's Office. I've represented children caught in the Abuse and Neglect system in the capacity as a volunteer Court Appointed Special Advocate (CASA), as well as an attorney appointed to represent the child's wishes. I've represented parents in Abuse and Neglect cases who desperately wanted to overcome addiction or mental illness for the benefit of their children.

I don't have illusions that our judicial system is perfect and that nothing ever goes wrong, but I do believe it works. For the public to believe that the system works and their grievances can be heard, they need to believe that judges will be fair. I can't count how many times I've been asked whether I think the judge assigned to the case will be fair; people shouldn't have to ask. For our judicial system to work, we need judges who are able to relate to the people who come before them and will not render decisions based on bias. We need judges who know that they will be forced to make decisions that alienate their friends and former co-workers and who believe in the system enough to be comfortable with that. We need judges who understand that they will be forced to set aside acrimonious feelings towards attorneys, litigants and criminal defendants if they are to make fair decisions. We need judges who deeply understand that their position is to uphold the law, regardless of how they feel about a particular attorney, litigant or case.

I know that I am capable of what it takes to be a judge that inspires confidence in our system. It would be far easier to write an essay about my shortcomings or weaknesses than it has been to write about why I am the best person for this position. While my shortcomings may be numerous, the ability to understand and apply the law has never been one of them. The ability to predict the outcome of a motion, trial or appeal is a constant source of professional satisfaction, even if the outcome is not normally considered a win.

I love the practice of law. I'm passionate about the judicial system, how it works and why it works. In my experience, the people who are the best at what they do become the best because they enjoy what they are doing. My perspective on the legal system and natural aptitude for learning and understanding new cases makes me well suited for a judicial position.

57. What items or events in your career have distinguished you or of which you are most proud?

Several years ago I was appointed to represent a youth in an Abuse and Neglect case. I came to the case late and had a decade of paperwork and prior court decisions to go through in a short six weeks before our three-day contested hearing. The case was delivered to me in multiple bankers' boxes, bankers' boxes which clearly contained only bits and pieces of the case history. It was one of the most time intensive cases I have worked on. Due to the amount of time the case had been pending and conflicts that developed towards the end, the other parties were deeply entrenched in their positions, positions diametrically opposed to mine.

Three days before the hearing, the parties reached an agreement resolving the case in my client's favor. Due to the nature of the case, it wasn't a win that I could share with friends and family or other attorneys. For the first time in my career, I realized that I didn't need public accolades or praises to feel good about my work. I knew what I had accomplished for my client and I was satisfied with that.

58. Provide any pertinent information reflecting positively or adversely on you that you believe should be disclosed to the Judicial Nomination Commission.

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59. Is there any comment that you would like to make that might differentiate you from other applicants or that is unique to you that would make you the best district court judge applicant?

I think there are very few attorneys who have as much exposure to various types of cases and fields of law as I do. I have worked for prosecutors in the United States Attorneys' Office and been the prosecuting attorney pursuant to the Student Practice Rule. I have practiced criminal law at both the trial and appellate level. As a Judge Pro Tem, I have had the opportunity to preside over misdemeanor criminal trials, bench trials and suppression hearings. Prosecuting, defending and sitting behind the bench all provide unique perspectives of how our system works. Prosecutors and defense attorneys are working with very different types of people and, while practicing in the same area of law, the challenges they face are very different.

In civil litigation, I've handled complex oil and gas operator disputes, emotionally charged child custody cases, a variety of personal injury cases, secured transactions agreements, real property ownership issues, construction defects and constitutional matters. Some of my clients view litigation as strictly business. For others, it is the most stressful thing in their lives.

The wide variety of clients I've represented and exposure to numerous areas of the law makes me uniquely suited to a judicial position. Throughout my career I've shown my ability to quickly learn new areas of law. I've also developed skills for working with numerous types of people, ranging from sophisticated, well educated clients, to clients who are indigent, homeless or suffering from severe mental illnesses. My various client exposures give me confidence that I can be fair and impartial to the wide variety of people before me, and will be able to find a way to communicate with the vast majority of people in the system.

**CERTIFICATE OF APPLICANT**

I understand that the submission of this application expresses my willingness to accept appointment as District Court Judge for the 13th Judicial District, if tendered by the Governor, and further, my willingness to abide by the rules of the Judicial Nomination Commission with respect to my application and the Montana Code of Judicial Conduct, if appointed.

8/9/2017

(Date)

Jacquelyn Hughes

(Signature of Applicant)

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A signed original **and** an electronic copy of your application and writing sample must be submitted by  
*5:00 p.m. on Thursday, August 10, 2017.*

**Mail the signed original to:**

**Office of Court Administrator  
c/o Lois Menzies  
P.O. Box 203005  
Helena, MT 59620-3005**

**Send the electronic copy to: [mtsupremecourt@mt.gov](mailto:mtsupremecourt@mt.gov)**

**APPLICATION FOR**  
**DISTRICT COURT JUDGESHIP**  
**Thirteenth Judicial District**

**Writing Sample**

**I. Officers Fulton and Moore illegally searched Gregory Groves' vehicle, mandating suppression of all evidence seized during the search of that vehicle.**

That Defendant was on probation does not give his probation officers unfettered authority to conduct searches. In this case, it was not even Defendant's property that was searched and Fulton and Moore provided no factual basis for the how the search of the car would support their suspicion that Defendant violated the terms of his probation by failing to report to Officer Moore.

The administrative rules applicable to probation searches provide:

Search a person or property. The probationer/parolee while on probation or parole if so ordered by the sentencing court, shall submit to a search of his person, automobile, or place of residence by a probation or parole officer, at any time of the day or night, with or without a warrant upon *reasonable cause* as may be ascertained by a probation/parole officer.

Admin. Rules Mont. Rule 20.7.1101(11) (*Emphasis added*). The Montana Supreme Court recently addressed what constitutes "reasonable cause" and concluded that A.R.M. Rule 20.7.1101(11) does not give probation officers unfettered authority to conduct searches at any time. *State v. Fischer*, 2014 MT 112, 374 Mont. 533, 323 P.3d 891. Here, Probation Officers Moore and Fulton searched a vehicle that did not belong to Defendant and over which the officers conducted no inquiry into whether Defendant had any authority or control over the vehicle, a per se warrantless entry. Assuming, *arguendo*, that the vehicle did belong to Defendant, the search was still illegal, as the officers had no "reasonable suspicion" to search the car.

**A. All evidence seized as a result of the search of Groves' vehicle must be suppressed because probation searches are limited to the person, automobile or place of residence of the probationer.**

The Administrative Rules of Montana are quite clear when it comes to what a probation or parole officer may search pursuant to A.R.M. 20.7.1101(11). This governing regulation requires probationers to submit to “a search of his person, automobile, or place of residence...” Nothing in the regulation requires a probationer to give authority to search an automobile belonging to a third party. The Montana Supreme Court has expressly stated “The probation officer obviously has no right to search third persons in any event.” *State v. Fogarty*, 187 Mont. 393, 415, 610 P.2d 140, 153 (1980), *overruled on other grounds in State v. Burke*, 235 Mont. 164, 171, 766 P.2d 254, 257 (1988). It is an absurdity to think that the existence of a probationer could subject a third party to the reduced standard applicable to probationers anywhere at any time. If a probationer is at a movie with a friend, is the friend subject to a search? Is the entire movie theatre subject to a search? If a probationer is on in a taxi, is the taxi automatically subject to a search?

The concept that the existence of a probationer in the presence of a non-probationer automatically subjects the non-probationer to a search of property over which there is no common authority is so absurd that it is rarely dealt with in case law. However, the Utah Supreme Court dealt with one situation in which a probationer's girlfriend's car was searched when the probation officer suspected the probationer had violated the terms of his probation. *Utah v. Davis*, 965 P.2d 525 (1998).

In *Davis*, law enforcement conducted a search of probationer's home. During the probation search, one defendant's girlfriend's car, a blue escort, was parked outside the home. The car was not registered in the defendant's name, was not a vehicle defendant reported as



using, and the defendant asserted he had no authority or control over the vehicle. The State argued that because the girlfriend lived with the defendant, she shared his reduced expectation of privacy and impliedly consented to searches of her property. The *Davis* court noted that if there is common authority, then one may have assumed the risk that a common area would be searched. However, the *Davis* court distinguished between residences, where there is a presumption of common authority, and automobiles. The court explained that in order to protect non-probationer's constitutional rights, officers must establish a factual basis for proving that the automobile was under the common authority of the probationer before conducting a search. The court stated that a search of the property without first making a determination as to whether it is subject to the authority and control of the probationer is per se a warrantless entry and "*is unlawful without further inquiry.*" Id. at 533.

In this case, Defendant was sitting in a vehicle that was not his vehicle. Prior to the search, no inquiry was made as to whom the vehicle belonged to or whether Defendant had any authority over the vehicle. Neither Moore nor Fulton asked either Defendant or Baker who owned the car or what Defendant was doing there. According to both Moore's and Fulton's reports, they informed Defendant and Baker that "the vehicle was going to be searched as Chance Conley had been in the car."

When law enforcement arrived, Sergeant Merial ran the tags and determined that the vehicle did not belong to either Defendant or Baker. Still, no inquiry was made to determine whether Defendant had sufficient common authority over the car to justify a probation search of an automobile owned by a third party. Moore and Fulton conducted a search of a third party vehicle without performing any inquiry as to whether Defendant had authority over the vehicle.

The search was warrantless entry and *per se* “unlawful without further inquiry.” All evidence seized from the time Fulton began searching Gregory Groves’ vehicle must be suppressed.

**B. Even if the State could show some common authority over Grove’s vehicle, it cannot establish “reasonable cause” for the July 6, 2015 search and all evidence seized as a result of that search must be suppressed.**

Probation officers must provide a factual basis to justify the “reasonable suspicion” that justifies a probation search. In *Fisher*, the defendant was required to make her residence open and available to an officer for a home visit or search *upon reasonable suspicion*. Fisher reported to a probation officer technician that she lost her job. Her probation officer attempted to return the phone call but was unable to reach Fisher. At that time, he decided to conduct a home visit pursuant to the terms of Fisher’s probation and request a urine sample. The urine sample was negative, leading Fisher’s probation officer to question whether Fisher was taking her medications as prescribed (a condition of Fisher’s probation). Subsequently, the officer conducted a full search of Fisher’s home, resulting in a revocation proceeding based on Fisher’s possession of oxycodone. *Fisher*, 2014 MT 112, ¶¶ 1-5.

While the Court ultimately held that the search of Fisher’s home was legal, the Court provided a helpful framework for determining when a probation search is legal:

This Court has held that a home visit by a probation officer is not a search. A probation officer conducting a home visit "may not open drawers, cabinets, closets or the like; nor may the officer rummage through the probationer's belongings. We stated, however, that a home visit has the potential to turn into a search once the officer has reasonable cause to engage in a search.

Both the Fourth Amendment to the United States Constitution and Article II, Section 11 of the Montana Constitution protect individuals from unreasonable searches and seizures. Generally, a nonconsensual search violates the Fourth Amendment unless it is conducted pursuant to a validly issued warrant supported by probable cause. The United States Supreme Court has concluded, however, that probation searches do not necessarily violate the Fourth Amendment when conducted pursuant to state law and supported by reasonable suspicion to believe

contraband would be found.

*Fisher*, 2014 MT 112, ¶¶ 7-10 (*internal citations omitted*). The Court noted that there must be a factual foundation justifying a probationary search. The search cannot be used for intimidation and harassment. *Id.*, citing *State v. Burke*, 235 Mont. 164, 171, 766 P.2d 254, 257 (1988). While the reasonable suspicion standard for warrantless probation searches is substantially less than the probable cause standard, a probation officer must still be able to provide a factual basis to support his or her “reasonable suspicion.” *Id.*

It is abundantly clear that a probation officer’s reason for conducting a search must be related to the suspected probation violation. For example, in *Fisher*, the officer suspected the defendant was not using her medications as prescribed. Therefore, his initial search was limited to conducting a pill count. In *Burke*, law enforcement smelled marijuana on the probationer and saw marijuana zig-zag wrappers. These facts gave rise to “reasonable suspicion” that the defendant had violated the “no illegal drugs” provision of her probation and justified the search of the defendant’s vehicle. *State v. Burke* (1988), 235 Mont. 165, 766 P.2d 254.

In the case at hand, there is no “reasonable suspicion” which would have justified a search of Gregory Grove’s car. Moore and Fulton suspected that Defendant violated his probation by not reporting to probation. They went to Defendant’s home that day to arrest him based on this probation violation. They articulated no other probation violation that they were investigating at the time. Neither Moore nor Fulton articulated any nexus to how a search of Grove’s vehicle would yield any additional evidence that would make it more or less likely that Defendant violated his probation in either of the two ways Moore and Fulton were investigating.

Additionally, there were no facts alleged that would have indicated that when Moore and Fulton found Defendant there were additional violations. There are no facts indicating a scent of

marijuana or methamphetamine in the vehicle. There were no drugs and no drug paraphernalia in plain sight. No facts were included in any report indicating that Defendant appeared high. Defendant submitted to a pat-down search of his person before the search of Groves' vehicle began and there was no sign of drug possession.

A probation officer cannot search a third party's vehicle simply because a probationer was sitting in it. Assuming that the State could have established some common authority over the car, Probation Officers Moore and Fulton still had to have a factually based reasonable suspicion that Defendant violated the terms of his probation *and that the search conducted would yield evidence that would confirm the specific term of probation the defendant was suspected of violating.*

Here, there is no indication that Moore and Fulton had any factual basis to suspect that Defendant had drugs in his possession. While they suspected Defendant violated his probation by not reporting to probation, there is reasonable suspicion that there was something in Groves' car that would confirm the suspicion that Defendant was not reporting to probation. When approached, no other evidence indicated an additional probation violation (possession of drugs) which would have justified a search of Groves' vehicle. There simply was no reasonable suspicion to justify the search of Groves' vehicle. All evidence suppressed as a result of Fulton's unlawfully initiated search of Groves' vehicle must be suppressed.